

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MILAGROS AGLUGUB,

Plaintiff,

v.

U.S. BANK NATIONAL ASSOCIATION, *et al.*,

Defendants.

Case No. 2:13-cv-00335 -APG-VCF

O R D E R

Defendant U.S. BANK NATIONAL ASSOCIATION, N.D. filed a Motion to Dismiss Plaintiff's Complaint [Dkt. #5] asserting insufficient process and insufficiency of service of process. Similarly, Defendants Sables, LLC, Marcy Axelrod, Law Offices of Les Zieve, and Sara Simonini filed a Motion to Dismiss, or Alternatively to Quash Service of Process [Dkt. #33]. Both Motions assert, among other things, that Plaintiff has failed to properly serve his Summons and Complaint upon these Defendants.¹ Defendants object that service of the Summons and Complaint was made by Certified Mail, which is improper under the applicable Federal Rules of Civil Procedure. Plaintiff has not opposed either of the Motions. "The failure of an opposing party to file points and authorities in response to any motion shall constitute a consent to the granting of the motion." LR 7-2.

¹ U.S. Bank also moved on the ground that Plaintiff failed to issue and serve a Summons against it. Subsequently, Plaintiff had a Summons issued as to U.S. Bank. (Dkt. #13.)

1 "A federal court does not have jurisdiction over a defendant unless the defendant
2 has been properly served under Fed. R. Civ. P. 4." *Direct Mail Specialists, Inc. v. Eclat*
3 *Computerized Technologies, Inc.*, 840 F. 2nd 685, 688 (9th Cir. 1988) (citations omitted).
4 "Plaintiffs bear the burden of establishing the validity of service of process when
5 defendants make a motion to dismiss pursuant to Federal Rule of Civil Procedure
6 12(b)(5)." *Carr v. International Game Technology*, 770 F. Supp. 2nd 1080, 1100 (D. Nev.
7 2011).

8 Entities like U.S. Bank and Sables, LLC must be served by delivering a copy of
9 the Summons and Complaint to an officer, managing agent, or any agent authorized by
10 appointment to receive service of process. Fed. R. Civ. P. 4(h). Law Offices of Les
11 Zieve is a sole proprietorship and Les Zieve is the owner. Marcy Axelrod and Sara
12 Simonini are individuals. Each of them must be personally served with the Summons
13 and Complaint. Fed. R. Civ. P. 4(e). Mailing a Summons and Complaint, even by
14 Certified Mail, is not proper service of process. Because Plaintiff has not properly served
15 the Summons and Complaint upon these defendants, the Defendants' Motions (Dkt.
16 ##5, 33) are granted. The Complaint is dismissed as to these individuals pursuant to
17 Fed. R. Civ. P. 4.

18 **IT IS HEREBY ORDERED** that Plaintiff's Complaint is dismissed, without
19 prejudice against refilling, as to Defendants U.S. Bank National Association, N.D.,
20 Sables, LLC, Marcy Axelrod, Law Offices of Les Zieve, and Sara Simonini.

21 Dated: November 1, 2013.

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24 ANDREW P. GORDON
25 UNITED STATES DISTRICT JUDGE
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